

EXHIBIT E

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE
3 INTELLECTUAL VENTURES I LLC, :
4 Plaintiff, : C.A. No. 12-193-LPS
5 v. : JURY TRIAL DEMANDED
6 AT&T MOBILITY LLC, AT&T :
7 MOBILITY II LLC, NEW CINGULAR :
8 WIRELESS SERVICES, INC., SBC :
9 INTERNET SERVICES, INC., AND :
10 WAYPORT, INC., :
11 Defendants. :
12 INTELLECTUAL VENTURES II LLC, :
13 Plaintiff, : C.A. No. 13-1631-LPS
14 v. : JURY TRIAL DEMANDED
15 AT&T MOBILITY LLC, AT&T :
16 MOBILITY II LLC, NEW CINGULAR :
17 WIRELESS SERVICES, INC., SBC :
18 INTERNET SERVICES, INC., AND :
19 WAYPORT, INC., :
20 Defendants. :
21 INTELLECTUAL VENTURES I, LLC, :
22 Plaintiff, : C.A. No. 13-1632-LPS
23 v. : JURY TRIAL DEMANDED
24 T-MOBILE USA, INC., AND :
T-MOBILE US, INC., :
Defendants. :

1 INTELLECTUAL VENTURES II, :
2 LLC, :
3 Plaintiff, : C.A. No. 13-1633-LPS
4 v. : JURY TRIAL DEMANDED
5 T-MOBILE USA, INC., AND :
6 T-MOBILE US, INC., :
7 Defendants. :
8 :
9 INTELLECTUAL VENTURES I, :
10 LLC, : C.A. No. 13-1634-LPS
11 Plaintiff, : JURY TRIAL DEMANDED
12 v. :
13 NEXTEL OPERATIONS, INC., :
14 and SPRINT SPECTRUM, L.P., :
15 Defendants. :
16 :
17 INTELLECTUAL VENTURES II, :
18 LLC, : C.A. No. 13-1635-LPS
19 Plaintiff, : JURY TRIAL DEMANDED
20 v. :
21 NEXTEL OPERATIONS, INC., :
22 and SPRINT SPECTRUM, L.P., :
23 Defendants. :
24

1 INTELLECTUAL VENTURES I, :
2 LLC, :
3 Plaintiff, : C.A. No. 13-1636-LPS
4 v. : JURY TRIAL DEMANDED

5 UNITED STATES CELLULAR :
6 CORPORATION, :

7 Defendant. :
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8 INTELLECTUAL VENTURES II, :
9 LLC, : C.A. No. 13-1637-LPS

10 Plaintiff, : JURY TRIAL DEMANDED

11 v. :
12 UNITED STATES CELLULAR :
13 CORPORATION, :

14 Defendant. :
15 Thursday, June 5th, 2014
16 1:31 p.m.

17 Teleconference
18 Chambers of Judge LEONARD P. STARK

19 844 King Street
20 Wilmington, Delaware

21 BEFORE: THE HONORABLE LEONARD P. STARK,
22 United States District Court Judge

23

24

1 weight into inconsistencies, we also have
2 different standards being applied in both
3 forums.

4 Thank you, Your Honor.

5 THE COURT: Okay. Thank you. Let
6 me give you my rulings on the two issues. I'll
7 talk first about the proposed acquisition bar.

8 Here, the defendants' proposal is
9 rejected. The plaintiff's alternative proposal
10 in their letter is adopted and should be
11 included in the protective order presented to me
12 for my signature.

13 I, of course, reviewed everything
14 carefully before the call and listened with
15 great interest to both sides' arguments on the
16 issue, and I just, at the end, continue to, in
17 this case, share the plaintiff's concerns about
18 the ambiguity and the breadth of what the
19 defendants have proposed.

20 I understand defendants have
21 engaged in an iterative process and narrowed
22 from where they started, and I appreciate that.
23 That's as it should be, but I think we still
24 ended up in a place that is still too ambiguous

1 and too broad here and really does risk having a
2 profound and negative and ultimately, I think,
3 unwarranted impact on plaintiff's counsel and
4 their ability to practice in this area in future
5 cases with other clients.

6 The risk, in my mind, of the
7 inadvertent use of defendants' confidential
8 information to advise IV or any other client on
9 the acquisition of patents that might then be
10 asserted against defendants is just too
11 attenuated a risk. Notwithstanding what I
12 understand about the business model, I just
13 nonetheless think that risk is too attenuated to
14 justify the imposition of the vague and broad
15 preclusion on plaintiff's counsel here.

16 And there I do continue,
17 notwithstanding the very persuasive comments
18 made by Ms. Jacobs. Nonetheless, I can't shake
19 this sense that if the defendants are -- are
20 fully and entirely as concerned with this risk
21 as they are positing, that they wouldn't want to
22 bind one another's counsel to something like
23 what they have proposed to bind plaintiff's
24 counsel to.

I recognize all the protections
that have been taken in the course of this case
and the effort to sever the cases and all that
in an effort to protect defendants from one
another, but it just seems to me it is, if not
as likely, still likely enough that competitors,
such as the defendants are, might in the
future -- and we're talking about a provision
with no time limit on it -- may come to acquire
a patent that they wish to assert against one of
their now codefendants in this case, and the
idea that defendants' counsel would be free to
advise their client to do that in a way that
plaintiff's counsel is not just doesn't seem
warranted to me under the circumstances here.

And the only other thing I would
add is, of course I don't think that there's any
binding authority on this point. I'm asked to
make a discretionary case-by-case decision. I
looked at what Judge Robinson and Judge Andrews
have done, as was cited in the papers. I was
reminded, of course, what I had done in the IV
versus Alterra case, and all I can say there is
my recollection is in that earlier case it

1 wasn't -- it really wasn't the focus of what was
2 in dispute, in my mind at least in that case.
3 And I've had occasion in this case to think it
4 through much more carefully, and I think I've
5 reached the right decision in this case.

6 Finally, on the question of the
7 prosecution bar, here I am going to adopt the
8 plaintiff's proposal. I still do have this
9 concern about the risk of strategic narrowing
10 amendments, even in the context of a post-grant
11 review here in IPR, and I just think that there
12 is -- even under the circumstances here, there
13 is a risk that those conversations that
14 litigation counsel wish to have the freedom to
15 have with IPR counsel could be informed by
16 confidential information of defendants that
17 litigation counsel have had access to, which
18 could ultimately lead to that type of strategic
19 narrowing that I am concerned with.

20 And so I think there is that risk,
21 and I think that warrants the protection that
22 the defendants have proposed.

23 And on the other side of the
24 ledger, I don't -- I don't think what I'm doing